

BEFORE THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF HAWAII

----- In the Matter of -----)
)
 PUBLIC UTILITIES COMMISSION)
)
 Instituting a Proceeding of)
 Commercial Mobile Radio)
 Service ("CMRS") Providers in)
 The State of Hawaii, Including)
 An Investigation to Determine)
 Whether it is Consistent with)
 The Public Interest to Exempt)
 CMRS Providers, their)
 Services, or Both, from Any)
 Provisions of Hawaii)
 Revised Statutes Chapter 269)
 _____)

DOCKET NO. 03-0186

ORDER NO. 20643

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PUBLIC UTILITIES COMMISSION
STATE OF HAWAII

Filed Nov. 18, 2003
At 9:00 o'clock A.M.

Karen Higashi.
Chief Clerk of the Commission

ATTEST: A True Copy
KAREN HIGASHI
Chief Clerk, Public Utilities
Commission, State of Hawaii.

K. Higashi.

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_____)	

ORDER

I.

Introduction

As of the date of this order, the parties in this docket are as follows: (1) AT&T Wireless PCS, LLC ("AT&T Wireless PCS"); (2) AT&T Wireless Services of Hawaii, Inc. ("AT&T Wireless Hawaii"); (3) Cellco Partnership, dba Verizon Wireless ("Verizon Wireless"); (4) Nextel West Corporation ("Nextel West"); (5) NPCR, Inc. ("NPCR"); (6) SprintCom, Inc., dba SprintPCS ("SprintPCS"); (7) T-Mobile USA, Inc. ("T-Mobile"); (8) General Telcourier, Inc., dba Pager One; (9) Island Page, Inc.; (10) Arch Wireless Operating Company, Inc. (fka, Mobile Communications Corporation of America, dba Ram Paging Hawaii) ("Arch Wireless"); (11) Mobile One, Inc.; (12) Verizon Hawaii Inc. ("Verizon"); (13) AT&T Communications of

Hawaii, Inc. ("AT&T"); and (14) the Department of Commerce and Consumer Affairs, Division of Consumer Advocacy ("Consumer Advocate").

AT&T Wireless PCS, AT&T Wireless Hawaii, Verizon Wireless, Nextel West, NPCR, SprintPCS and T-Mobile jointly filed motions for reconsideration of Procedural Order No. 20563¹ on November 10, 2003 ("motion(s) for reconsideration"), pursuant to Hawaii Administrative Rules ("HAR") § 6-61-137.

II.

Discussion

A.

Motions for Reconsideration filed by AT&T Wireless PCS, AT&T Wireless Hawaii, Nextel West, NPCR, SprintPCS and T-Mobile

HAR § 6-61-137 provides, in relevant part, that a motion for reconsideration "shall be filed within ten days after the decision or order is served upon the party." Furthermore, pursuant to HAR § 6-61-23(a)(1), when by HAR chapter 61 or by notice or by order of the commission, any act is required or allowed to be done at or within a specified time, we may, for good cause shown and in our discretion, order the period of time enlarged, if written request is made before the expiration of the period originally prescribed.

¹Procedural Order No. 20563 was issued by the commission on October 7, 2003.

Pursuant to HAR §§ 6-61-21(e) and 6-61-137, motions for reconsiderations by AT&T Wireless PCS, AT&T Wireless Hawaii, Nextel West, NPCR, SprintPCS and T-Mobile were due on October 20, 2003. However, because AT&T Wireless PCS, AT&T Wireless Hawaii, Nextel West, NPCR, SprintPCS and T-Mobile filed their motions for reconsideration on November 10, 2003 (after the motion for reconsideration period had expired), we find their motions to be untimely. The record indicates that only Verizon Wireless was granted an extension of time, until November 10, 2003, to file its motion for reconsideration, pursuant to HAR § 6-61-23(a)(1). See Order No. 20615, filed on October 31, 2003. Accordingly, we conclude that AT&T Wireless PCS, AT&T Wireless Hawaii, Nextel West, NPCR, SprintPCS and T-Mobile failed to meet the motion for reconsideration requirements set forth in HAR § 6-61-137, and, therefore, we must deny their motions for reconsideration for being untimely. See *In re Chansun H. Lee, dba Four Clover Tour Service*, Docket No. 99-0368, Order No. 17502 (January 28, 2000).

Nonetheless, by filing their motions for reconsideration and memorandum in support jointly with Verizon Wireless, we will hereinafter, construe and treat AT&T Wireless PCS', AT&T Wireless Hawaii's, Nextel West's, NPCR's, SprintPCS' and T-Mobile's filings as joinders to or replies in support of Verizon Wireless' motion for reconsideration. Pursuant to HAR § 6-61-140, we deem those joinders or replies desirable and necessary, and, thus, conclude that leave should be granted to allow such joinders or replies in support.

B.

Motion for Reconsideration filed by Verizon Wireless

On September 12, 2003, the Stipulating Parties² filed a proposed Stipulated Procedural Order for the commission's review and approval. By their proposed Stipulated Procedural Order, the Stipulated Parties requested that the commission consider the following preemption issue in this docket:

What provisions of Hawaii Revised Statutes ("HRS") chapter 269, Hawaii Administrative Rules ("HAR") Chapters 6-80 and 6-81, and of Public Utilities Commission ("Commission") General Order No. 8, Title VII, if applied to commercial mobile radio services ("CMRS"), are preempted under federal laws and regulations?

In Procedural Order No. 20563, the commission stated, in relevant part, the following:

We decline to adopt the Stipulating Parties' proposed preemption issue because HRS § 269-16.9 does not require the preemption issue to be decided in order for the commission to exempt CMRS providers, their services, or both, from any provision of Hawaii Revised Statutes, Chapter 269 or its applicable rules.

In its motion for reconsideration, Verizon Wireless requests that the commission reconsider Procedural Order No. 20563, in part, to the extent that it also includes the preemption issue (as requested by the Stipulated Parties on September 12, 2003)

²As referred to in Procedural Order No. 20563, the Stipulated Parties comprise of: (1) Ameritech Mobile Communications, LLC, dba Cingular Wireless ("Ameritech Mobile"); (2) Ameritech Wireless Holding, Inc. ("Ameritech Wireless"); (3) AT&T Wireless PCS; (4) AT&T Wireless Hawaii; (5) Verizon Wireless; (6) Nextel West; (7) NPCR; (8) Sprint PCS; (9) T-Mobile; (10) Arch Wireless; (11) Verizon; (12) AT&T; and (13) Consumer Advocate. In that same order, however, we approved Ameritech Mobile's and Ameritech Wireless' withdrawal as parties to this docket.

among the issues to be addressed and resolved in this docket.

Verizon Wireless contends, among other things, that:

The preemption issue involves important threshold questions of law, the resolution of which would materially advance the ultimate disposition of this docket. Consideration of the preemption issue will narrow and reduce the number and scope of remaining issues. As such, the resources of the parties and the [C]ommission would be conserved. Without a determination of whether preemption may be applicable, a review of the relevant Hawaii statutes and administrative rules would be incomplete and possibly inadequate.

Upon our review, we do not find any grounds in Verizon Wireless' motion for reconsideration that would warrant any modification to our decision to decline to adopt the Stipulated Parties' proposed preemption issue in Procedural Order No. 20563. We must reiterate the following: (1) The instant proceeding was initiated by the commission "to examine the issues surrounding whether it is consistent with the public interest to exempt" CMRS providers, their services, or both, from any provision of HRS Chapter 269 in accordance with HRS § 269-16.9 and its applicable rules; and (2) HRS § 269-16.9 does not require the preemption issue to be decided in order for the commission to exempt CMRS providers, their services, or both, from any provision of HRS Chapter 269 or its applicable rules. Contrary to Verizon Wireless' assertion that the resolution of the preemption issue will narrow and reduce the number and scope of remaining issues, we are concerned that expanding the issue to include the preemption issue will likely unreasonably broaden the issues originally contemplated by the

commission when it initiated this investigation, and thereby unduly delaying the proceeding.³ Based on the foregoing, we conclude that Verizon Wireless' motion for reconsideration should be denied.⁴

III.

Orders

THE COMMISSION ORDERS:

1. AT&T Wireless PCS', AT&T Wireless Hawaii's, Nextel West's, NPCR's, SprintPCS' and T-Mobile's motions for reconsideration are denied for being untimely. Instead, these motions for reconsideration will be construed and treated as joinders to or replies in support of Verizon Wireless' motion for reconsideration, and leave is granted to allow for such filings.

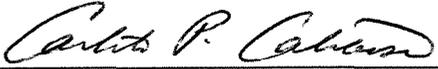
2. Verizon Wireless' motion for reconsideration is denied.

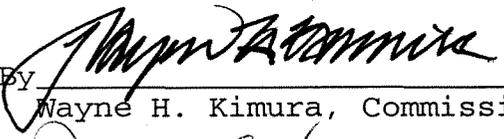
³See HRS § 269-16.9(b) ("The commission shall expedite, where practicable, the regulatory process with respect to exemptions[.]").

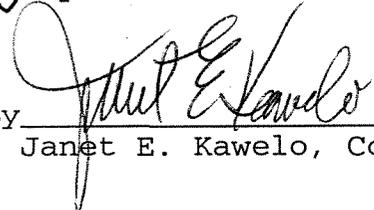
⁴Our denial of Verizon Wireless' motion for reconsideration does not preclude Verizon Wireless or any interested persons from seeking a declaratory ruling from the commission, pursuant to HAR Chapter 6-61, Subchapter 16.

DONE at Honolulu, Hawaii this 18th day of November,
2003.

PUBLIC UTILITIES COMMISSION
OF THE STATE OF HAWAII

By 
Carlito P. Caliboso, Chairman

By 
Wayne H. Kimura, Commissioner

By 
Janet E. Kawelo, Commissioner

APPROVED AS TO FORM:


Kris N. Nakagawa
Commission Counsel

03-0186.en

CERTIFICATE OF SERVICE

I hereby certify that I have this date served a copy of the foregoing Order No. 20643 upon the following parties, by causing a copy hereof to be mailed, postage prepaid, and properly addressed to each such party.

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DATED: November 18, 2003